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**FEB 23 2005**

**OFFICE OF PETITIONS**

In re Application of	:	
David S. Beckemeyer	:	DECISION DISMISSING
Application No. 10/694,518	:	PETITION
Filed: October 13, 2004	:	
Attorney Docket No. 20006.1010	:	

This is a decision on the papers submitted December 23, 2004, which have been treated as a petition under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of October 11, 2004, rather than the presently accorded filing date of October 13, 2004.

The petition is dismissed.

Petitioners allege that the application was deposited in USPS Express Mail service on October 11, 2004. In support, the petition is accompanied by a copy of a USPS receipt dated October 11, 2004 that indicates a tracking number of EW152900095US.

Paragraph (c) of 37 CFR 1.10 states that:

"Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label **showing the "date-in,"** and of any other **official notation by the USPS** relied upon to show the date of deposit."

(Emphasis supplied)

A grantable petition under 37 CFR 1.10(c) must include "a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit."

The petition filed December 23, 2004, is not accompanied by the required true copy of the "Express Mail" mailing label. However, petitioner states:

"The Express Mail package was deposited in a Kiosk at the Post Office located at 1551 Dunwoody Village Parkway, Atlanta Georgia 30338-9998 on October 11, 2004. A copy of the receipt that was obtained from the Kiosk is attached to this response. The tracking number listed on the receipt is apparently assigned by the Kiosk and thus, is not reflected in the filing package."

Petitioner states in the Utility Patent Application Transmittal that the original application filing was mailed under Express Mail Label No. ED090319807US. As this number differs from the tracking number provided in the USPS receipt submitted with the instant petition, it is not possible to associate the tracking number of EW152900095US with the Express Mail label number ED090319807US. Therefore, the USPS receipt submitted with the instant petition does not verify that the package with Express Mail label number ED090319807US was, in fact, submitted on October 11, 2004.

Furthermore, review of the "USPS Track & Confirm Shipment Details" for Express Mail Receipt No. ED090319807US, obtained by

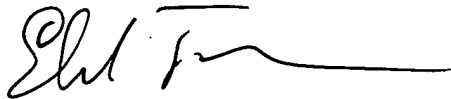
this office, indicates the item was first processed by the USPS on October 13, 2004.<sup>1</sup>

Accordingly, the petition filed December 23, 2004, does not contain a true copy of the "Express Mail" mailing label showing the "date-in" as required by the rule nor does it contain any other notation made by the USPS for Express Mail label number ED0900319807US and is, therefore, dismissed.

Please note, 37 CFR 1.10(b) provides that correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked, and that persons dealing indirectly with the employees of the USPS (such as by depositing correspondence in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. On petition, the failure to obtain an "Express Mail" receipt with the "date-in" clearly marked may be considered an omission that could have been avoided by the exercise of due care. While the Office strongly urges direct deposit of "Express Mail" correspondence in order to obtain a legible copy of the "Express Mail" mailing label, parties are not precluded from using "Express Mail" drop boxes, but do so at their own risk. See MPEP 513.

The application is being returned the Office of Initial Patent Examination for further processing with the presently accorded filing date of October 13, 2004.

Telephone inquiries should be directed to the undersigned at (571)272-3228.



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Office of Petitions  
United States Patent and Trademark Office

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<sup>1</sup> Additionally, it is noted that review of the "USPS Track & Confirm Shipment Details" for Tracking No. EW152900095US, obtained by this office, indicates the item with that tracking number was first accepted by the USPS on October 13, 2004.